IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1040 OF 1998

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALJIBHAI MAGANLAL SALVI

Versus

MANAGING DIRECTOR,
GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

Appearance:
1. Special Civil Application No. 1040 of 1998
PARTY-IN-PERSON for Petitioner
MR. PARESH UPADHYAY for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 10/03/2004

ORAL JUDGEMENT

1. This petition is filed by Shri Valjibhai Maganlal Salvi seeking certain reliefs, which are set out in paragraph-8(A) of the petition.

2. Before the matter is dealt with on the averments

made in the petition and the contentions raised therein, it is required to be noted that this is one of the six matters, which are notified together. The reason of notifying all these matters together is that all these matters are filed by the petitioner as party-in-person and all these petitions are in Gujarati. It is apparent from the record that at the relevant time, the Courts have been granting indulgence to the petitioner as he was appearing party-in-person. Not only that, strict procedure was not insisted for amending the petitions, that is why, to an extent a confusion is created and it became difficult to find out the real controversy.

3. This petition was filed on 16th February, 1998 and was affirmed also on the same day. The matter was first placed on Board on 24th February, 1998, when this Court (Coram:K.R.Vyas, J.) passed the following order:

> "Called out twice. Party in person is not present. Hence, S.O. to 5-3-1998."

Thereafter, on 5th March, 1998, Notice was issued, returnable on 6th April, 1998, direct service was permitted. On 6th April, 1998, the matter was adjourned to 27th April, 1998. Thereafter, the matter appeared on Board on 30th June, 1998 and was directed to be notified on 2nd July, 1998. The matter thereafter came up for hearing on 28th June, 1999, when this Court passed the following order:

> "The petition is in Gujarati. Leaving apart that, many of the documents are also in vernacular language.
>
> Office is directed to place this matter before the Hon'ble Chief Justice for assignment of the same to another Bench."

The next order is dated 11th August, 1999, which reads as under:

> "At the request of the petitioner-party-in-person, liberty is granted to mention to the First Court for transferring these matters to some other court."

On 28th February, 2000, the order passed by the Court is as under:

> "The Registry is directed to post this

application for admission hearing on 15th March, 2000."

Thereafter, on 31st March, 2000, the matter was adjourned to 7th April, 2000. Then, the matter appeared on 18th December, 2001 when it was adjourned to 25th December, 2001 along with the entire group. On 15th February, 2001, the matters were adjourned to 27th February, 2001 along with all the matters notified on that day. Again on 14th March, 2001, the matter was adjourned to 3rd April, 2001 and there being no further orders on 20th January, 2004, the matters were listed before the Court when the same were adjourned to 26th February, 2004. On 26th February, 2004, the matters were adjourned to 5th March, 2004.

These dates are set out so as to keep the track of the journey of this petition and form it a part of this judgement and order for ready perusal.

4. Rule.

Mr.Paresh Upadhyay, learned Advocate appearing for the respondent, waives service of Rule.

At the request of both the parties, the matter is taken up for final disposal.

5. On perusal of the record, it is clear that on 2nd July, 1998, this matter along with Special Civil Application Nos.1041/1998, 1042/1998, 1044/1998 and 1045/1998 was heard by this Court and an order was passed whereby this Special Civil Application along with Special Civil Application Nos.1041/1998 and 1042/1998 were rejected, while Special Civil Application Nos.1044/1998 and 1045/1998 were partly allowed to the extent mentioned in the said judgement and order. Against that judgement and order, Letters Patent Appeals, being 1046 of 1998 and 1150 of 1998, were filed, which were disposed of by this Court (Coram:Mr.Justice C.K.Thakkar [as he then was] & Mr.Justice A.L.Dave) by judgement and order dated 9th December, 1998 setting aside the order passed by the learned single Judge. The petitions, being Special Civil Application No.1040 of 1998 and 1041 of 1998, were remanded to decide them in accordance with law after hearing the appellant-petitioner on their own merits.

6. The relief prayed for in paragraph-8(A) of this petition is that, `taking into consideration the suggestions made by this Court in its judgement and order dated 26th April, 1996 on page nos.14, 17, 18 and 19;

and, also after taking into consideration the service record of the petitioner as on 17th May, 1988 and by adding seven years to the deemed date, 18th May, 1981, with effect from 17th May, 1988, the respondent, Gujarat Water Resources Development Corporation Ltd. (hereinafter referred to as "GWRDC" for short) be directed to promote the petitioner to the post of Executive Engineer with all difference of salary'.

7. The petitioner has produced on record a bunch of papers (it is so referred because it is not in any proper application form) in English to be treated as an amendment to the petition, affirmed on 20th April, 1999 wherein it is stated as under:

"My proposal for an amendment approved by your honour on dt.13-4-99, I am requesting you pl. to see following amendment after Para No.8 from original Page No.4 of Sp.Civil Application No.1040/98."

The record of the case does not show that this matter was ever listed on Board on 13th April, 1999. What is sought to be done is that the petition memo, which is filed in Gujarati, is sought to be amended. Paragraphs-9 and 10 are sought to be added and at the end, prayers are made in the form of Clauses (D) and (E), which read as under:

"(D) Be pleased to issue appropriate order for to consider my promotions to the post of Executive Engineer (Mech.), looking my service record as when my case becomes due for promotion i.e. on dtd. 17-5-88 as held in the judgement and grant appropriate deemed date with all consequential and incidental benefits flowing therefrom.

E) Be pleased to take necessary steps against the officers for non-compliance of the judgement dt. 26-4-96 of Hon'ble High Court."

8. The respondent-GWRDC has filed an affidavit-in-reply affirmed by Mr.V.R.Dave, Administrative Officer, on 2nd December, 1999.

The petitioner has again filed a bunch of papers (not in the prescribed format) on 2nd December, 2000 wherein it is stated that on 20th April, 1999, amendment application (page nos.31 to 34) was moved, but then, as this application is required to be further amended,

hence, following paragraphs be read after paragraph-10 on page-33. Paragraphs 11, 12 and 13 are sought to be added besides as many as seven prayers are sought to be incorporated by the present bunch of papers.

9. In this petition, the petitioner has claimed that, `by virtue of a common judgement and order dated 26th April, 1996 of this Court (Coram:R.K.Abichandani, J.) rendered in Special Civil Application Nos.2974/1994, 2260/1993, 2872/1995 and 2873/1995, the petitioner should have been granted promotion to the post of Executive Engineer and as it appears, with all consequential benefits'.

10. To continue the tradition of granting indulgence to a party-in-person, which is established by the learned Judges of this Court, the petitioner was allowed to read all documents, all paragraphs and judgements of various Courts and advance his arguments. The party-in-person read the aforesaid judgement of this Court in toto, and submitted that in view of the observations made by this Court on internal page nos.14, 17, 18 and 19 of that judgement, the respondent-GWRDC is required to be issued a direction to promote him to the post of Executive Engineer, with effect from a particular date with all consequential benefits. The observations relied upon by the party-in-person read as under:

> "The petitioner's case will be required to be considered by the respondent-Corporation for giving deemed date of promotion in the cadre of Deputy Executive Engineers and also in the cadre of Executive Engineers on the basis of the deemed date that he may get in the cadres of Deputy Executive Engineers, keeping in view his service record at the relevant time, when he became due for consideration for promotion to these respective posts. This would be absolutely necessary not only keeping in view the fact that the petitioner's' record, as it existed, could alone have been considered at the relevant time just before his junior was promoted in the cadre of Deputy Executive Engineers and Executive Engineers, but also to neutralise the systematic efforts which seemed to have been made after 9th January, 1991, when the Resolution was passed by the Government, entitling the petitioner to be given his due seniority position to create hurdles in his way to promotion to the higher posts. ... ..."
>
> (emphasis supplied)

10.1 The party in person next relied upon the observations made by this Court in the aforesaid judgement dated 26th April, 1996 on internal page-17, which reads as under:

> "..... The apprehension of the petitioner cannot be said to be without basis in view of the personal interest of Mr.J.V.Rathod involved in the matter. Since Mr.D.M.Chauhan's and Mr.J.V.Rathod's personal interest was involved, it would be appropriate for the higher authorities to ignore the confidential records written by them against the petitioner while considering the question of petitioner's deemed date of promotion to the higher posts of Deputy Executive Engineer and Executive Engineer. This would be subject to the earlier direction that only the confidential records of the relevant period at the time when the petitioner's case was due for consideration, and in any event just before his immediate junior was promoted to the higher posts, would be required to be considered for giving deemed dates of promotion to the petitioner in the cadres of Deputy Executive Engineers and the Executive Engineers."
>
> (emphasis supplied)

10.2 The party-in-person also relied upon the directions given by the Court on page nos.18 and 19 of the judgement, which are required to be reproduced for ready reference being relevant for adjudication of the controversy involved in this matter:

> "Under the above circumstances, the following directions are given in these petitions:-
>
> (1) The respondent-Corporation is directed to consider the question of giving deemed date of promotion to the petitioner in the post of Deputy Executive Engineer, on the basis of his initial date of recruitment i.e. 9.7.1964 and being seniormost as reflected in the seniority list of Additional Assistant Engineers (Mechanical) on the date on which he might have become due for such promotion and in any event, from the date on which his immediate junior was promoted as Deputy Executive Engineer;

(2) The respondent-Corporation should, on the basis of the deemed date of promotion of the petitioner that may be fixed in the cadre of Deputy Executive Engineers, consider the case of the petitioner for a deemed date of promotion to the cadre of Executive Engineers on the day on which he might have become due for such promotion and in any event, from the date on which his immediate junior was promoted from the cadre of Deputy Executive Engineer as Executive Engineer;

The above exercise of giving deemed date to the petitioner in the cadre of Deputy Executive Engineers and Executive Engineers should be completed and necessary orders passed in light of this judgment within one month from the date of receipt of the writ of the order.

(3) The respondent-Corporation will ignore the adverse entries or remarks that may have been made by Mr.J.V.Rathod and Mr.D.M.Chauhan against the petitioner and will fix the deemed dates of promotion on the basis of the record as it existed when his case was due for consideration for promotions as held in this judgment.

(4) The respondent-Corporation will clear all the pending T.A., D.A. bills of the petitioner as may be admissible and also pay to him the arrears of pay, charge allowance, etc., as may be due and admissible to him expeditiously."

(emphasis supplied)

The claim put forward by the party-in-person is that the aforesaid observations contain a clear direction to promote the petitioner to the post of Deputy Executive Engineer and then, to the post of the Executive Engineer. But then, the party-in-person is not able to and is not ready to understand the difference between a direction `to promote' and a direction `to consider the case for promotion' and that is why all this difficulty. On a plain reading of the aforesaid, it is clear that it is a direction to the respondent-Corporation `to consider the case of the petitioner for giving deemed date of promotion in the post of Deputy Executive Engineer and

also in the post of the Executive Engineer'.
(emphasis supplied)

11. From the affidavit-in-reply filed on behalf of the respondent-GWRDC, it is clear that the aforesaid directions issued by this Court were duly complied with by the respondent-Corporation, which is reflected from the contents of paragraphs 3.1, 3.2, 3.3 and 3.4. These paragraphs are reproduced for ready reference as under:

"3.1 I say that, by way of the present petition, the petitioner is claiming promotion as Executive Engineer with consequential benefits. For this purpose, reliance is placed by the petitioner on the judgement and order of this Honourable Court (Coram: R.K.Abichandani J.) dated 26/4/1996 in a group of petitions filed by the petitioner (S.C.A.2060 of 1993 and allied matters).

3.2 I say that as per the directions given by the Honourable Court in the said judgement dated 26/4/1996, the case of the petitioner was considered for promotion on the post of Executive Engineer, by the Personnel Committee of the Corporation, which is competent authority for this purpose under the rules. I say that the case of the petitioner was considered by the said personnel committee of the Corporation in its meeting dated 24/9/1996. I say that on the basis of the overall performance and the service record of the petitioner, the personnel committee did not find the petitioner fit and suitable for the post of Executive Engineer."

3.3 I also say that while considering the case of the petitioner for promotion on the post of Executive Engineer, adverse entries made in the confidential reports of the petitioner, which were directed to be ignored by the Honourable Court in judgement referred above, were ignored and the said factor to that extent was not considered as an adverse factor against the petitioner.

3.4 I also say that while considering the case of the petitioner for promotion on the post of Executive Engineer, the position as on the date on which the immediate junior to the petitioner was promoted as Executive Engineer, was taken into consideration i.e. as on 27/4/1992."

12. Mr.Paresh Upadhyay, learned Advocate appearing for the respondent-GWRDC, submitted that the promotion to the post of Executive Engineer is governed by `the principle of proved merit and efficiency' and, therefore, the Personnel Committee of the Corporation did consider the case of the petitioner, keeping in mind the directions issued by this Court in the aforesaid judgement. The Committee did not find the petitioner fit to be promoted to the post of the Executive Engineer. He submitted that the decision of the Personnel Committee of the Corporation is not open for judicial review unless it is shown that the said decision is absolutely unjust, arbitrary and violative of, `principle of proved merit and efficiency'. It is only if the decision is alleged to be suffering from aforesaid lacunaes that it can be taken up for judicial review .

13. The party-in-person produced a copy of the application dated 19th April, 2001, along with few annexures, a copy of which is already given to the learned Advocate for the respondent, to contend that the performance of the petitioner was very good and not only very good, but better than his colleagues. What is sought to be contended by this application and the documents annexed thereto, is that his performance during the year 1990-91 was better than other Deputy Executive Engineers. The law on the point is clear and well settled that when the `principle of proved merit and efficiency' governs the promotion, then, the Court is not to sit in appeal over the judgement of the Personnel Committee of the respondent-GWRDC, which is a body of experts on the subject and which is supposed to have looked into the matter in detail.

Beside that, no case is made out before this Court to come to a conclusion that the Personnel Committee of the respondent did not look into the matter and did not consider the case of the petitioner, as was required under the directions issued by this Court. In that view of the matter, the decision of the Personnel Committee of the respondent is not found with any fault and, therefore, the present petition deserves dismissal.

14. At this juncture, it is deemed fit to mention that the party-in-person argued the matter at full length. The group of the matter started on 8th March, 2004 and it continued till the major part of the first half on 10th March, 2004. All possible indulgence was granted to the petitioner because he was appearing party-in-person. Sufficient care was taken to examine all possible points in light of the documents produced and to which the party-in-person invited the attention of the Court. Other documents were also looked into, which were produced along with the two subsequent so-called amendments dated 20th April, 1999 and 2nd December, 2000. Having gone through the record of the case and having heard the learned party-in-person and the learned Advocate for the respondent, this Court is of the considered opinion that the petition is devoid of any merit and hence, cannot be entertained and no relief can be granted to the petitioner. The petition is, therefore, dismissed. For the fact that the petitioner is appearing as party-in-person, no orders are passed as to costs. Rule is discharged.

(Ravi R. Tripathi, J.)

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